Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

October 1998 Term

Raymond B. Sherwood

Petitioner,

v.

Marilyn Hall Patel

Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDEX I

Raymond B. Sherwood
1612 Merian Drive
Pleasant Hill, California 94523
(925) 827-2604
IN PROPRIA PERSONA

No.

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Marilyn Hall Patel

Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDEX I

Dated: February 26, 1999

Raymond B. Sherwood
1612 Merian Drive
Pleasant Hill, California 94523
(925) 827-2604
IN PROPRIA PERSONA

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND BAILEY, SHERWOOD No. C 97-02796 CW

Plaintiff, ORDER OF DISMISSAL

v.

MARILYN HALL PATEL, Judge

Defendant.

On October 31,1997, the Court issued an Order continuing Case Management Conference wherein the Case Management Conference previously set for October 31, 1997, was continued to Janurary 9, 1998 at 1:30 p.m. On January 9,1998, a Case Management Conference was held. Sue Kamlet, Assistant U.S. Attorney, specially appeared on behalf of the Defendant. No appearance was made by or on behalf of the Plantiff. Accordingly,

IT IS HEREBY ORDERED that the above captioned action is DISMISSED for failure to prosecute

Dated: Jan 11 1988 signed Claudia Wilken

United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND BAILEY, SHERWOOD

Plaintiff,

v.

MARILYN HALL PATEL, Judge

Defendant.

/

No. C 97-02796 CW

ORDER REAFFIRMING DISMISSAL OF CASE

Plaintiff objects to the Court's Order of Dismissal entered on January 18, 1998 and requests that it be set aside. In that Order the Court dismissed this case for failure to prosecute when Plaintiff failed to attend the Case Management Conference held on January 9, 1998. Plaintiff states that he did not attend the January 9 Case Management Conference because he had received a telephone message from the Court advising him that it had been rescheduled to January 16, 1998. Plaintiff states that he subsequently received written notice from the Court vacating the Case Management Conference scheduled for January 16. Plaintiff is incorrect. However, even if he were correct, this case was properly dismissed. As explained in the Court's Order Denying Plaintiff's

Motion for Default Judgment, Defendant Judge Marilyn Hall Patel is protected from lawsuits by absolute judicial immunity. Moore v. Brewster, 96 F.3d 1240, 1243 (9th Cir. 1996), cert. denied, 117 S. Ct. 963 (1997). Judicial immunity applies even when the judge acts erroneously, or in excess of judicial authority or the act is injurious to the plaintiff. Id. at 1244.

Plaintiff continues to contend that he is suing Judge Patel in her individual capacity, not in her official capacity as a judge. However, as explained in the Order Denying Plaintiff's Motion for Default Judgment, Judge Patel was acting in her official capacity as a judge when she issued the order to show cause which is the subject of Plaintiffs complaint. Judge Patel is immune from Plaintiff's civil suit for damages because it is based upon her judicial actions.

Because Plaintiff has failed to state a justiciable claim against Judge Patel, this case was properly dismissed.

CONCLUSION

For the foregoing reasons, the Court overrules Plaintiff's objection to the Court's Order of Dismissal and reaffirms dismissal of this

case. The clerk shall close the file and no more filings shall be received in this closed docket.

IT IS SO ORDERED.

Dated Mar 10 1998

Signed Claudia Wilken
United States District Judge

(NOT FOR PUBLICATION)
UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAYMOND BAILEY SHERWOOD, Plaintiff-Appellant, v. MARILYN HALL PATEL, Defendant-Appellee.	No. 98-15496 D.C.No. CV-97-02796-CW MEMORANDUM

Appeal from the United States District Court for the Northern Division of California Claudia Wilken, District Judge, Presiding

Before: HUG, Chief Judge, SCHROEDER and KOZINSKI, Circuit Judges.

Raymond Bailey Sherwood appeals pro se the district court's order reaffirming its dismissal of his action against District Court Judge Patel. Sherwood seeks damages arising when Judge Patel issued an order to show cause in an action involving Sherwood and the Internal Revenue Service. We agree with the district court, that Judge Patel was entitled to judicial immunity because she was acting within her official capacity as a judge when she issued the order. See Moore v. Brewster, 96 F.3d 1240, 1243, 1243-44 (9th Cir. 1996).

AFFIRMED

[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

[2] The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RAYMOND BAELEY SHERWOOD, Plaintiff-Appellant, v. MARILYN HALL PATEL, Defendant-Appellee.	No. 98-15496 DC# CV-97-02796-CW Northen California (Oakland) ORDER

Before: Chief Judge Hug, Schroeder, Kozinski, Circuit Judges

The petition for rehearing is denied.

Summons

Collection Information Statement

In the matter of Raymond B. Sherwood

1612 Merian Dr.

Pleasant Hill, CA 94523

Internal Revenue District of Sacramento Periods Individual Income Tax for the Calendar Years Ended Dec. 31, 1989, Dec. 31. 1990, Dec. 31, 1991. The Commissioner of Internal Revenue To Raymond B. Sherwood at 1612 Merian Dr., Pleasant Hill, CA 94523. You are hereby summoned and required to appear before Mrs. F. Aguilera an Internal Revenue Service (IRS)officer, to give testimony and to bring for examination the following information related to the collection of the tax liability of the person identified above for the periods shown:

All documents and records you possess or control regarding assets, liabilities, or accounts held in the taxpayer's name or for the taxpayer's benefit which the taxpayer wholly or partially owns, or in which the taxpayer has a security interest. These records and documents include but are not limited to: all bank statements, checkbooks, canceled checks,

savings accounts passbooks, records or certificates of deposit for the periods shown:

All documents and records you possess or control regarding assets, liabilities, or accounts held in taxpayer's name or for the taxpayer's benefit which the taxpayer wholly or partially owns, or in which the taxpayer has a security interest. These records and documents include but are not limited to : all bank statements, checkbooks, canceled checks, savings account passbooks,, records, or certificates of deposit for the period From Jan 1, 1995 to Jan 15, 2006. Also include all current vehicle registration certificates, deeds or contracts regarding real property, stocks and bonds, accounts, notes, and judgments receivable, and all current life or health insurance policies.

IRS will use this information to prepare a Collection Information Statement. We have attached a blank statement to guide you in producing the necessary documents and records.

Place and time for appearance: At 185 Lennon Lane, Ste 200, Walnut Creek, CA 94598 On the 21st day of February, 1996 at 9:00 o'clock A.M.

Issued under authority of the Internal Revenue Code this 7th day of February 1996. Signed F. Aguilera Revenue Officer.

A-5 cont.

Summons

Income Tax Return

In the matter of Raymond B. Sherwood

1612 Merian Dr.

Pleasant Hill, CA 94523

Internal Revenue District of Sacramento Periods Individual Income Tax for the Calendar Years Ended Dec. 31, 1994. The Commissioner of Internal Revenue To Raymond B. Sherwood at 1612 Merian Dr., Pleasant Hill, CA 94523. You are hereby summoned and required to appear before Mrs. F. Aguilera an Internal Revenue Service (IRS) officer, to give testimony and to bring for examination the following information related to the collection of the tax liability of the person identified above for the periods shown:

All documents and records you possess or control regarding income you received for the years 1994. These records and documents include, but are not limited to: Forms W-2 (Wage and Tax Statement), Forms 1099 for interest and dividend income, employee earnings statements, and records of deposit with banks or other financial institutions. Also include all other books, records, documents, and receipts for income from, but not limited

to the following sources: wages, salaries, tips, fees, commissions, interest, rents, royalties, alimony, state, or local tax refunds, annuities, life insurance policies, endowment contracts, pensions, estates, trusts, discharge of indebtedness, distributive shares of partnership income, business income, gains from dealings in property, and any other compensation for services (including receipt of property other than money). Including all documents and records about any income you assigned to any other person or enity. IRS will use this information to prepare a federal income tax return for the following year(s) when you don't file a return. 1994. We have attached a blank return to guide you in producing the necessary documents and records. Business address and telephone number of Internal Revenue Service officer named above. 185 Lennon Lane, Ste 200, Walnut Creek, CA 94598. Place and time for appearance: At 185 Lennon Lane, Ste. 200, Walnut Creek, CA 94598 On the 21st day of February, 1996 at 9:00 A.M.

Issued under the authority of the Internal Revenue Code this 9th day of February , 1996. Signed F. Aguilera, Revenue Officer.

MICHAEL J. YAMAGUCHI (California State Bar No. 84984)

United States Attorney

JAY R. WEILL (California State Bar No. 75434)

Assistant United States Attorney, Chief, Tax Division

DAVID L. DENIER (California State Bar No. 95024.)

Assistant United States Attorney ,10th Floor Federal Building

450 Golden Gate Avenue, Box 36055

San Francisco, California 94102, Telephone: (415) 436-6888

Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA and FRANCESCA AGUILERA, Revenue Officer, Internal Revenue Service, Petitioners, v. RAYMOND B. SHERWOOD, Respondent.	**VERIFIED PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONSERS**

Petitioners, the **UNITED STATES OF AMERICA** and its Revenue Officer, **FRANCESCA AGUILERA,** allege and petition as follows:

1. This proceeding is brought and this Court has jurisdiction hereof under Sections 7402(b) and 7604(a) of the Internal Revenue Code (26 U.S.C. Sec. 7402 and 7604).

2. Petitioner **FRANCESCA AGUILERA** is and at all times mentioned herein was an employee and officer of the Internal Revenue Service of the United States Department of the Treasury authorized by the Secretary of the Treasury to perform the duties and take the actions described in Sections 7602 and 7603 of the Internal Revenue Code (26 U.S.C. 7602 and 7603), under Treasury Regulations 301.7602-1 and 301-7603-1 (26 C.F.R. _ 301.7602-1 and 301.7603-1).

3. Petitioner FRANCESCA AGUILERA is and at all times mentioned herein was attempting in the course of her authorized duties to collect certain unpaid federal tax liabilities of RAYMOND B. Sherwood for the years ending December 31, 1989, December 31, 1990 and December 31, 1991.

4. Petitioner FRANCESCA AGUILERA is and at all times mentioned herein was attempting in the course of her authorized duties to have respondent produce for inspection, examination and copying by petitioner certain records possessed by respondent which are relevant and material to her attempt to collect the aforementioned federal tax

liabilities of RAYMOND B. SHERWOOD, for the periods stated in paragraph 3 above.

5. Petitioner FRANCESCA AGUILERA is and all times mentioned herein was attempting in the course of her authorized duties to determine the correct federal income tax liability of RAYMOND B. SHERWOOD for the taxable year 1994.

6. Petitioner FRANCESCA AGUILERA is and all times mentioned herein was attempting in the course of her authorized duties to have respondent produce for inspection, examination and copying by petitioner certain records possessed by respondent which are relevant and material to her attempt to determine the aforementioned federal tax liability of RAYMOND B. SHERWOOD for the period stated in paragraph 5 above.

7. Respondent RAYMOND B. SHERWOOD's last known address in 1612 Merian Drive, Pleasant Hill, California, 94523 which is within the venue of this Court.

8. Petitioner FRANCESCA AGUILERA is informed and believes that said respondent is in possession and control of testimony, books, records, papers and other data covered by said petitioner's inquiries and to which petitioners do not otherwise have access, possession, or control.

A-7 cont.

9. On February 7, 1996, petitioner FRANCESCA AGUILERA served a summons on said respondent in respect to the subject matter described in paragraphs 3, 4, and 8 above, by leaving an attested copy of the summons at respondent's last known address as described in paragraph 7 above. The requirements of said summons are self-explanatory, and a true copy thereof is attached hereto as EXHIBIT A and is hereby incorporated by reference as a part of this petition.

10. On February 7, 1996, petitioner FRANCESCA AGUILERA served a summons on said respondent in respect to the subject matter described in paragraphs 5, 6 and 8 above, by leaving an attested copy of the summons at respondent's last known address as described in paragraph 7 above. The requirements of said summons are self-explanatory and a true copy thereof is attached hereto as Exhibit B and is hereby incorporated by reference as part of this petition.

11. The items sought by the summons described in paragraph 9 above are relevant to and can reasonably be expected to assist in the collection of the above-mentioned federal tax liabilities of RAYMOND B. SHERWOOD for the years stated in paragraph 3 above. it was and now is essential to completion of petitioner's inquiry regarding the financial information of respondent that respondent produce the items demanded

by said summons.

12. The items sought by the summons described in paragraph 10 above are relevant to and can reasonable be expected to assist in the determination of the above-mentioned federal tax liability of RAYMOND B. SHERWOOD for the year stated in paragraph 5 above. It was and now is essential to completion of petitioner's inquiry that respondent produce the items demanded by said summons.

13. The respondent did not appear on February 21, 1996, as requested in the summonses.

WHEREFORE, having stated in full its petition against the respondents, petitioners pray for enforcement of the subject summonses as alleged and set forth above as follows:

A. That the named respondent herein be ordered to appear and show cause before this Court, if any, why he should not be compelled by this Court under 26 U.S.C. 5 7604(a) to give such testimony and to produce such items as are required in the herein above-described summonses;

B. That respondent be ordered by the Court to appear before the petitioner FRANCESCA AGUILERA, or any other designated agent, at a time and place directed by the Court and then and there give such

testimony and produce such items as is required by the summonses; and

C. That the Court grant the petitioner UNITED STATES OF AMERICA its costs in this proceeding and such other and further relief as may be necessary and proper.

MICHAEL J. YAMAGUCHI, United States Attorney

DAVID L. DENIER, Assistant United States Attorney

Tax Division

VERIFICATION

I, FRANCESCA AGUILERA, pursuant to 28 U.S.C. 1746, declare and states as follows:

I am a duly employed revenue officer in the Walnut Creek, California office of the Internal Revenue Service of the United States Treasury Department. I am one of the petitioners making the foregoing petition. I have read and know the entire contents of the foregoing petition, and all statements of fact contained in said petition are true to the best of my own personal knowledge and recollection, and as to those facts stated upon information and belief, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on (unreadable), 1996 at Walnut Creek, California.

Signed Francesca Aguilera

FRANCESCA AGUILERA

Summons

Collection Information Statement

In the matter of Raymond B. Sherwood

1612 Merian Dr.

Pleasant Hill, CA 94523

Internal Revenue District of Sacramento Periods Individual Income Tax for the Calendar Years Ended Dec. 31, 1989, Dec. 31. 1990, Dec. 31, 1991. The Commissioner of Internal Revenue To Raymond B. Sherwood at 1612 Merian Dr., Pleasant Hill, CA 94523. You are hereby summoned and required to appear before Mrs. F. Aguilera an Internal Revenue Service (IRS)officer, to give testimony and to bring for examination the following information related to the collection of the tax liability of the person identified above for the periods shown:

All documents and records you possess or control regarding assets, liabilities, or accounts held in the taxpayer's name or for the taxpayer's benefit which the taxpayer wholly or partially owns, or in which the taxpayer has a security interest. These records and documents include but are not limited to: all bank statements, checkbooks, canceled checks,

savings accounts passbooks, records or certificates of deposit for the periods shown:

All documents and records you possess or control regarding assets, liabilities, or accounts held in taxpayer's name or for the taxpayer's benefit which the taxpayer wholly or partially owns, or in which the taxpayer has a security interest. These records and documents include but are not limited to : all bank statements, checkbooks, canceled checks, savings account passbooks,, records, or certificates of deposit for the period From Jan 1, 1995 to Jan 15, 2006. Also include all current vehicle registration certificates, deeds or contracts regarding real property, stocks and bonds, accounts, notes, and judgments receivable, and all current life or health insurance policies.

IRS will use this information to prepare a Collection Information Statement. We have attached a blank statement to guide you in producing the necessary documents and records.

Place and time for appearance: At 185 Lennon Lane, Ste 200, Walnut Creek, CA 94598 On the 21st day of February, 1996 at 9:00 o'clock A.M.

Issued under authority of the Internal Revenue Code this 7th day of February 1996. Signed F. Aguilera Revenue Officer.

A-7 EXHIBIT A cont.

Summons

Income Tax Return

In the matter of Raymond B. Sherwood

1612 Merian Dr.

Pleasant Hill, CA 94523

Internal Revenue District of Sacramento Periods Individual Income Tax for the Calendar Years Ended Dec. 31, 1994. The Commissioner of Internal Revenue To Raymond B. Sherwood at 1612 Merian Dr., Pleasant Hill, CA 94523. You are hereby summoned and required to appear before Mrs. F. Aguilera an Internal Revenue Service (IRS) officer, to give testimony and to bring for examination the following information related to the collection of the tax liability of the person identified above for the periods shown:

All documents and records you possess or control regarding income you received for the years 1994. These records and documents include, but are not limited to: Forms W-2 (Wage and Tax Statement), Forms 1099 for interest and dividend income, employee earnings statements, and records of deposit with banks or other financial institutions. Also include all other books, records, documents, and receipts for income from, but not limited.

A-7 EXHIBIT B

to the following sources: wages, salaries, tips, fees, commissions, interest, rents, royalties, alimony, state, or local tax refunds, annuities, life insurance policies, endowment contracts, pensions, estates, trusts, discharge of indebtedness, distributive shares of partnership income, business income, gains from dealings in property, and any other compensation for services (including receipt of property other than money). Including all documents and records about any income you assigned to any other person or enity. IRS will use this information to prepare a federal income tax return for the following year(s) when you don't file a return. 1994. We have attached a blank return to guide you in producing the necessary documents and records. Business address and telephone number of Internal Revenue Service officer named above. 185 Lennon Lane, Ste 200, Walnut Creek, CA 94598. Place and time for appearance: At 185 Lennon Lane, Ste. 200, Walnut Creek, CA 94598 On the 21st day of February, 1996 at 9:00 A.M.

Issued under the authority of the Internal Revenue Code this 9th day of February , 1996. Signed F. Aguilera, Revenue Officer.

A-7 EXHIBIT B cont.

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRIRCT OF CALIFORNIA

UNITED STATES OF AMERICA and FRANCESCA AGUILERA, Revenue Officer Petitioners, v. RAYMOND B. SHERWOOD, Respondent.	NO. C 96-1828 MHP ORDER TO SHOW CAUSE RE ENFORCEMENT OF INTERNAL REVENUE SERVICE SUMMONSES

Good cause having been shown by the petitioners upon their petition filed in the above-entitled proceeding on May 16, 1996 1996, it is hereby:

ORDERED that respondent RAYMOND B. SHERWOOD appear in person or by his authorized representative, before this Court on the 26th day of July, 1996, at 10:30 in Courtroom No. 11, 19TH Floor, United States Courthouse, 450 Golden Gate Avenue, San Fransico, California, and then and there show cause, if any, he has, why he should not be compelled to appear and testify an produce books, records and other documents as commanded by the summonses heretofore served upon him as alleged and set forth in particular in said petition; and it is further.ORDERED that a certified copy of this Order to Show Cause,

together with a copy of the aforesaid petition, be served upon said respondent in accordance with Rule 4 of the Federal Rules of Civil Procedure at least thirty-five (35) days before the return date of this Order above specified; and it is further

ORDERED that at least twenty-one (21) days before the return date of this Order, respondent may file and serve a written response to the petition, supported by appropriate affidavits or declarations in conformance with 28 U.S.C. 1746, as well as any motions it desires to make, that the petitioners may file and serve a written reply to such response, if any, at least fourteen (14) days before the return date of this Order; that all motions and issues raised by the pleadings will be considered on the return date of this Order, and only those issues raised by motion or brought into controversy by the responsive pleadings and supported by affidavits or declarations will be considered at the return of this Order, and any uncontested allegation in the petition will be considered admitted.

ORDERED this 23rd day of May, 1996, at San Francisco, California.

signed Marilyn Hall Patel

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Case No. C 96-1828

ORDER SETTING CONFERENCE

In accordance with Civ. L.R. 16-4, lead trial counsel will try this case are directed to confer in advance of the Case Management/Status Conference with respect to all matters contained in the attached Proposed Joint Case Management Order and all other matters described in Rule 16(a), (b) and (c) and Civ. L.R. 16-8(b). Counsel shall complete the attached Order and file same not less than ten (10) days in advance of the Conference set for 8/16/96 at 9:30 a.m. If additional space is needed, please attach a separate sheet. Plaintiff's counsel shall bear the responsibility for convening all counsel and completing and filing the order.

Each party shall be represented at the Scheduling Conference by the lead counsel who will try the case and be prepared to discuss all matters referred to in the preceding paragraph. Counsel shall have authority to enter stipulations and make admissions regarding all matters described herein.

PLAINTIFF IS DIRECTED TO SERVE COPIES OF THIS ORDER AT ONCE UPON ALL PARTIES IN THIS ACTION AND UPON THOSE SUBSEQUENTLY JOINED IN ACCORDANCE WITH THE

PROVISIONS OF RULES 4 AND 5, FEDERAL RULES OF CIVIL PROCEDURE AND CIV. L.R. 4 AND 5, and to file with the Clerk of the Court a Certificate reflecting such service.

Counsels' appearance at the Scheduling Conference may be excused by leave of court (a phone request to the Courtroom Deputy is necessary) if this matter has been referred to Arbitration, in which case the attached order shall be filed and shall set forth the arbitration status of the case including the date scheduled for hearing, if any has been set, and the continuances which have been granted.

Case Management Conferences and other nondispositive matters may be heard by telephone, if all the parties agree and with approval of the court. Counsel should advise the Courtroom Deputy ten (10) days in advance of the scheduled hearing date of this preference.

MOTIONS TO DISMISS SHALL NOT BE FILED BEFORE THE INITIAL CASE MANAGEMENT CONFERENCE EXCEPT BY LEAVE OF COURT.

*** FAILURE TO COMPLY WITH THIS ORDER or the provisions of Fed. R. Civ. P. 16 may be deemed sufficient grounds for dismissal of this cause, default or other appropriate sanctions. (See Rule 16(f)).

Signed MARILYN HALL PATEL
United States District Judge

A-9 cont.

RAYMOND B. SHERWOOD, SUI JURIS
1612 MERIAN DR.
PLEASANT HILL, CALIFORNIA 94523
(510) 827-2604
IN PROPRIA PERSONA

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA and FRANCESCA AGUILERA, Revenue Officer, Internal Revenue Service Petitioners, v. RAYMOND B. SHERWOOD Respondent.	Case No. C 96 1828 MHP OPPOSITION RESPONSE , TO VERIFIED PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONSES; MOTION TO DISMISS

Now comes Raymond B. Sherwood, respondent in the above-entitled proceeding by counsel David L. Denier, and moves the Court to dismiss with prejudice, the Order to Show Cause on the ground. that there is no jurisdiction for this action; there is abuse of process; and defects in the summons.

Rule 12 of the Federal Rules of Civil Procedure governs that an objection may consist of an absence of a jurisdictional basis, of some defect in the summons, or of insufficient service. Rule l2(b) covers all of them under one or the other of its clauses numbered (2),(4), and (5).

This COURT ORDER is flawed by the fact that an order to show cause is

not authorized by the Federal Rules of Civil Procedure.

"Rule 7(b) provides that all applications to the court for orders shall be by motion. The federal rules and the forms clearly indicate that motions are brought before the court by means of a "notice of motion," which serves the purpose of a rule to show cause and obviates the necessity for obtaining such a rule. U.S. v. Rollnick, D.C.Pa. 1940, 33 F-Supp. 863. Resort to a rule to show cause offends the terminology adopted by the civil rules. Rosenberg v. Hano & Co., D.C.Pa. 1938, 26 F.Supp. 160

This Court has made no short and plain statement of the grounds upon which the Courts jurisdiction depends, in conformity with Fed. R. Civ.P. 8(a), and L.R. 204. (Allegations of Jurisdiction). Fed. R. Civ.P. Rule 11; the signer is certifying that he actually has read the document.

The court observed in Zaldivar v. City of Los Angeles, C.A. 9th, 1986, 780 F.2d 823, 830 (Wiggins, J.) that: (t)he Rule admits of no exceptions to the requirement that all reasonable attorneys will read a document before filing it in court. In practical effect, an obviously meritorious paper will go unchallenged, whether read or not. The force of the rule is to eliminate the defense of personal ignorance of defects in a paper challenged as unmeritorious.

This Court has ruled and issued an order without subject matter, personal, legislative, or constitutional jurisdiction.

NO SUBJECT MATTER JURISDICTION

There is no subject matter jurisdiction without an Act of Congress (a

statute) to actually confer the jurisdiction on a district court, and the presence of subject matter jurisdiction, usually with a citation of the jurisdiction-conferring statute, must be demonstrated in every case. There is no evidence of Authority from the Secretary pursuant to IRC Section 7401.

IRC 7401 is "jurisdictional" as held in United States v. Ernist Sims, 355 F. Supp. 513 (1973): "Internal Revenue Code provision that civil action may not be commenced unless Secretary of Treasury or his delegate authorizes or sanctions it and the Attorney General or his delegate directs that it be commenced, is jurisdictional.', And; "This Court holds that 26 U.S.C. S 7401 requirements constitute facts essential to jurisdiction. The failure to prove jurisdictional facts when specifically denied is fatal to the maintenance of this action. This Court erred in hearing the case on the merits and now determines such hearing was a nullity and not amenable to effective order or judgment, except the order now made that this Court does not have jurisdiction over the subject matter."

"Thus, the prescribed procedure requires two steps. First, that a civil action be authorized by the Secretary or his delegate. "Secretary" as defined in 26 U.S.C. S 7701 means the Secretary of the Treasury. "Delegate" as defined in 26 U.S.C. 7701 refers to one who is an employee of the Treasury Department securing his authority from the Secretary or by redelegation, directly or indirectly. The second step requires direction of the Attorney General or his delegate to commence

the action. Under 26 U.S.C.A. 5 7701(a)(12) "the term 'or his delegate' when used in connection with any other official of the United States shall be similarly construed". The term "Attorney General" means the Attorney General of the United States. 26 U.S.C. 7701(a)(22)."

"[1, 2] This Court finds no rational means to avoid the conclusion that the requirements of 26 U.S.C. 7401 are jurisdictional."

NO PERSONAL JURISDICTION

Respondent is a private citizen who has made no contract with the Secretary of the Treasury to manufacture, sell, or distribute alcohol, tobacco, or firearms, and is not employed by or have a contract with the United States government under any provision of the Uniform Commercial Code, admiralty, or other laws.

NO LEGISLATIVE JURISDICTION

There is no LEGISLATIVE JURISDICTION by the fact Title 26 USC Internal Revenue Code has never been enacted into law, and is not legal evidence of law, as confirmed by ISSUE OF LAW in Title 1 USC 204(a) et seq.

Title 1 USC S 204. Codes and Supplements as evidence of the Laws of United Sates and District of Columbia; citation of Codes and Supplements

(a) United States Code.-The matter set forth in the edition of the Code of Laws of the United States current at the time shall, together with

the then current supplement, if any, establish prima facie the laws of the United States,.....

"The United States Code is only a prima facie statement of the statute law, and statutes collected in it do not change their meaning nor acquire any new force by their inclusion and if construction is necessary, recourse must be had to the original statutes themselves." *Murrell v. W. U. Tel. Co., C.C.A. Fla.1947, 160 F.2d 787:*

There are no statutes at large to support any claims and the only implementing regulations shown in the Parallel Tables of Authorities and Rules for IR Codes sections cited flow from Title 27 CFR Alcohol, Tobacco, and Firearms as shown below:

IRC Sec.	CFR (Implementing regulations)
7401	27 Part 70
7402	None listed
7602	27 Part 1702, 2963
7603	27 Part 701

Bureau of Alcohol, Tobacco and Firearms, Treasury 127 CFR Part 70 - PROCEDURE AND ADMINISTRATION

SUBCHAPTER M --ALCOHOL, TOBACCO AND OTHER EXCISE TAXES [2]27 CFR Part 170 MISCELLANEOUS REGULATIONS RELATING TO LIQUOR [3]27 CFR Part 296 MISCELLANEOUS REGULATIONS RELATING TO TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES.

There has been no authority or jurisdiction by any Statute at Large or implementing regulation that was published in the Federal Register pursuant to 44 USC 5 1501 et al. (See *California Bankers v. Schultz 416 US 21,* "we think it important to note that the Act's civil and criminal penalties attach only upon violation of regulations promulgated by the Secretary; if the Secretary were to do nothing, the Act itself would impose no penalties on anyone.")

NO CONSTITUTIONAL JURISDICTION

The United States Government and/or the Internal Revenue Service has no authority or jurisdiction over Respondent or Respondent's property pursuant to Article I Section 8 Clause 17 of the United States Constitution, that provides such authority ONLY over places purchased by the consent of the legislature of the state in which the same shall be. for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings. None of Respondent's property is located in a federal enclave or federal regulated area, nor is Respondent an officer, employee, or elected official of the United States, the District of Columbia, or any agency or instrumentality thereof, nor is Respondent employed by the United States Government.

California Government Code Article 2 Territorial Jurisdiction Sec. 110. Extent of State sovereignty and jurisdiction. The sovereignty and jurisdiction of this State extends to all places within its boundaries as

established by the constitution. The extent of such jurisdiction over places that have been or may be ceded to, purchased, or condemned by the United States is qualified by the terms of the cession or the laws under which the purchase or condemnation is made. (Enacted 1943) United States and State of California are two separate sovereignties, each dominant within its own sphere. Reading v. Los Angeles (1947) 81 CA2d 888, 185 P2d 430, app dismd 334 US 825, 92 L Ed 1754, 68 S Ct 1338.

Response to Petitioners Paragraph 1.

1. Respondent challenges Petitioner Francesca Aguilera's claim that this Court has jurisdiction, for the following reasons;

a. No evidence of authorization from the Secretary of the Treasury and the Attorney General as required by section 7401.

b. Authorization for sections 7402(b) and 7604(a) must rely upon S 7401.

c. Petitioner Francesca Aguilera has wrongfully applied their administrative procedures under Sections 7402 and 7604 by the fact that the implementing regulations for Sections 7402 and 7604 are under 27 CFR, Alcohol, Tobacco and Firearms relating to excise taxes (as referred to above) and NOT Title 26 CFR, income tax.

The IRS must proceed via the United States Attorney as confirmed in Origin and Authorization at 6-3.111 of the United States Attorneys' Manual Title 6 -- Tax Division, where it states that actions to collect taxes

on behalf of the government originate by a request and authorization from a delegate of the Secretary of the Treasury pursuant to Section 7401. Administrative Procedure Act, Title 5 USC further mandates at 556(d): "Except as otherwise provided by statute the proponent of a rule or order has the burden of proof ... A sanction may not be imposed or rule or order issued except on consideration of the whole record or those Parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence ... A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts."

Therefore, absent the verified authorization by the Secretary of the Treasury or his delegate for a civil action under the direction of the Attorney General or his delegate, and by the fact that the cited sections are under the authority of Title 27, Alcohol, Tobacco and Firearms and not Title 26, (Income Tax), there can be no Jurisdiction for this action.

Response to Petitioners Paragraph 2.

2. Respondent challenges the validity of the petitioner's claim of authority from the Secretary of the Treasury to perform the duties and take actions described in Sections 7602 (Exhibit 3) and 7603 (Exhibit 4) as stated by Revenue Officer Fracesca Aguilera in her verification. The Parallel Tables of Authority (Exhibit 1) clearly indicate that Section 7602 is under Title 27 Parts 170 & 296 (Exhibit 2) which is

related to Alcohol, Tobacco and Firearms and Not Title 26 (Income Tax). Petitioner Francesca Aguilera admits she is a Revenue Officer of the Internal Revenue Service and makes no mention in her VERIFIED PETITION of being an agent of the Bureau of Alcohol, Tobacco and Firearms and thusly cannot possibly have the authority she claims in her Verified Petition. Petitioner misrepresented 301.7602-1 and 301.7603-1 as "Treasury" regulations when in fact they are CFR 26 "Internal Revenue."

Response to Petitioners Paragraph 3.

3. Petitioner Francesca Aguilera admits she was attempting to collect certain alleged unpaid federal tax liabilities for the years 1989, 1990, and 1991, but she was without authority to do so (see Para. 2 above) and she is NOW seeking the records to substantiate the illegal collection action she initiated against the Respondent in September 1995 (Exhibit 5), obviously, without substantiating documentation on which to base her claim, even if she possessed the alleged delegated Authority for her action. This raises the question of "on what subject matter did she base her claim of liability" for the years in question. There has been no assessment records, Notices of Deficiency or, any processes required by the administrative procedures of the Internal Revenue Service to initiate any collection action in this matter. Petitioner has failed to establish any administrative authority or jurisdiction over Respondent.

Response to Petitioners Paragraph 4.

4. Petitioner Francesca Aguilera admits she was attempting in the course of her (alleged] authorized duties, to obtain records which are relevant and material to her attempt to collect tax liabilities but she failed to obtain the required information PRIOR to initiating collection action. Petitioner Francesca Aguilera was, and is, at this time, illegally engaged in collection by Wage Levy against Respondents Wife's employer Montgomery Ward (Exhibit 6), in violation of 28 USC Sec. 3102(a), 3203, and 3104 with respect to levy on earnings being excluded and excepted from garnishment. Francesca Aguilera has also levied Respondent's retirement account at Transamerica Occidental (Exhibit 7) in violation of IRC Section 401(a)(13) and Treasury Regulation Section 1.4011(a)-13(b)(2)(i) which states, "... that benefits provided under the plan may not be anticipated, assigned (either at law or in equity), alienated or subject to attachment, garnishment, levy, execution or other legal or equitable process."

The levy against the protected retirement account was initiated in conspiracy with C. Roper, Acting Chief FBI (Exhibit 7). A prudent person has to conclude that this entire collection action has been initiated without the papers, records and data to establish a liability against the Respondent because if the Petitioner had the papers, records and data to establish a liability, she certainly would not need to summons papers, records, and data at this time.

A-10 cont.

Response to Petitioners Paragraph 5.

5. Petitioner Francesca Aguilera again admits that she was attempting to determine the correct federal income tax liability of Petitioner but she has failed to provide any evidence to establish authority or jurisdiction over Respondent which would compel Respondent to produce records or information. Petitioner's action is an attempt to violate Respondents rights under the 4th and 5th Amendment of the Constitution. Furthermore; Respondent attempted an inquiry under CFR Section 601.201 Rulings and Determination letters, which reads:

(a) General practice and definitions.

(1) It is the practice of the Internal Revenue Service to answer inquires of individuals and organizations, whenever appropriate in the interest of sound tax administration, as to their status for tax purposes and as to the tax affects of their acts or transactions. District Directors apply the statutes, regulations, Revenue Rulings, and other precedents published in the Internal Revenue Bulletin in the determination of tax liability, the collection of taxes, and the issuance of determination letters in answer to taxpayer's inquiries or requests.

Respondent requested a Determination letter from District Director Michael S. Bigelow (Exhibit 8) and from District Director Gerald F. Swanson (Exhibit 9) in an attempt to establish a determination. The presumption must hold that Respondent has no obligation or liability when

the District Directors failed to respond to legitimate inquiries required by Section 601.201.

Response to Petitioners Paragraph 6.

6. Petitioner Francesca Aguilera sent a frivolous Summons that failed to meet the requirements of 7402(b) to obtain jurisdiction of the federal courts by "appropriate process" and further, failed to observe 7402(f), general jurisdiction, for civil action involving internal revenue pursuant to 1340 of title 28 USC.

There was no Seal of the Court or a signature of a duly elected or appointed Judge, as required by statutes. Petitioner also conveniently fails to admit that the Respondent replied to her Summons of Feb. 7, 1996 with a PETITION TO QUASH, (Exhibit 10) since no court was identified as required by S 7604 for "appropriate process", and as of this time, the Petitioner has failed to respond.

Petitioner Francesca Aguilera, who with intent to defeat the application of any provision of this title (26 USC) failed to perform any of the duties of her office or employment (Sec. 7214(3)), did initiate a fraudulent summons that was blatantly flawed by the fact that IRC 7604(b) Enforcement of Summons applies *ONLY* to IRC sections 6420(e)(2), 6421(g)(2), 6427(i)(2) and 7602, which is not relevant or material to this instant action. These cited sections are:

6420 Gasoline used on farms;

6421 Gasoline used for certain non-highway purposes;

6427 Fuels not used for taxable purposes.

In each of these sections the laws for the examination of books and witnesses is *ONLY* applicable to these particular cited sections as they relate to retail excise taxes and imposition of tax on petroleum products; and it is *ONLY* for the purpose of ascertaining the correctness of any claim under these cited sections that the Secretary **SHALL** have the authority granted by paragraphs (1), (2), and (3) of section 7602 as it relates to Title 27 CFR, Alcohol, Tobacco, and Firearms, as shown in the Parallel Tables of Authorities for the implementing regulations. Certificate of Service signed by the person serving, Dorothy Mays, Revenue Officer aide, - SHALL be evidence of the facts it states on application for enforcement of the summons, and **SHALL** be served by the Secretary, by an attested copy when no tangible evidence exists that an application was made by "appropriate process" as cited in 7402(b) and 7604.

Furthermore the Certificate of Service of the Summons, includes a notation under the heading: "Pursuant to section 7603, Internal Revenue Code", which only applies to Title 27 CFR Part 70 of Alcohol, Tobacco, and Firearms, as shown in the Parallel Tables of Authorities for the implementing regulations, and not CFR 26 Internal Revenue.

The judicial device for enforcing the administrative summons is provided by IRC 7402(b) and 7604. The Parallel Tables of Authorities and Rules for IR Codes sections cited show that the implementing regulations for

7604 flow from Title 27 CFR Alcohol, Tobacco, and Firearms and 7402 have none listed.

Response to Petitioners Paragraph 7.

7. Uncontested

Response to Petitioners Paragraph 8.

8. Petitioner Francesca Aguilera states that she is informed but fails to state her source of information, along with when and how she obtained said information and how Petitioner Francesca Aguilera came to believe that Respondent is in control of testimony, books and records, papers and other data which Petitioner claims she does not otherwise have access, possession, or control. If this is a true statement, Petitioner Francesca Aguilera does not have "possession" of documentation to establish the present ongoing collection actions referred to in paragraphs 3 and 4 above ? This is another admission by Petitioner Fracesca Aguilera that she initiated illegal collection action for the years 1989, 1990 and 1991 without the required information to establish an alleged liability on the part of the Respondent.

Response to Petitioners Paragraph 9.

9. Respondent admits that Petitioner left a Summons at Respondent's address that was frivolous, unauthorized, failed to comply with numerous provisions of the IR Code as stated in the petition to quash, and not in compliance with Rule 4 of the Fed. Rul. of Civ. Proc. Petitioner Francesca Aguilera has failed to acknowledge or

reveal the Respondent replied to the Summons with a "Petition to Quash" (Exhibit 10) and cited various flaws to the Summons in question, as evidenced by this exhibit.

Furthermore the Certificate of Service of the Summons, states that it is "Pursuant to section 7603, Internal Revenue Code", which only applies to Title 27 CFR Part 70 of Alcohol, Tobacco, and Firearms, as shown in the Parallel Tables of Authorities for the implementing regulations, and not CFR 26 Internal Revenue.

Response to Petitioners Paragraph 10.

10. Same as Paragraph 9.

Response to Petitioners Paragraph 11.

Petitioner Francesca Aguilera states that she has no documents in her possession to establish any liability, yet she initiated collection action against Respondent in October of 1995, for years 1989, 1990, and 1991. She also claims the existence of a federal tax liability, but is now requesting information to establish that same liability. Petitioner Francesca Aguilera has shown no evidence of her authority, her jurisdiction over Respondent or any documentation to provide probable cause for her actions. Furthermore, Respondent replied to Internal Revenue Service Asst. District Counsel Neal 0. Abreu with a letter (Exhibit 11) questioning the validity of said Summons noting various violations of statutes; Mr. Abreu has yet to reply to this letter. The Summons that Petitioner Francesca Aguilera is attempting to misuse

relates only to Title 27 CFR Part 70 of Alcohol, Tobacco, and Firearms, as cited in the Parallel Tables of Authorities for the implementing regulations. Explanations in the table state that: "Entries in the table are taken directly from the rulemaking authority citations provided by federal agencies in their regulations. Federal agencies are responsible for keeping these citations current and accurate."

Respondent is a private citizen who has made no contract with the Secretary of the Treasury to manufacture, sell, or distribute alcohol, tobacco, or firearms, and is not employed by or have a contract with the United States government under any provision of the Uniform Commercial Code.

Response to Petitioners Paragraph 12.

12. The Petitioner again refers to Respondent's tax liability and again failed to establish how has she determined that Respondent has a tax liability. Petitioner Francesca Aguilera made conflicting statements that the Respondent has a tax liability and that she is not in possession of any information, records, or documentation to make such claim. Petitioner Francesca Aguilera attested to facts in her Verified Petition as being TRUE, but has made only contradictory statements in her attempt to establish a claim for liability. A liability must be based on assessments as detailed in IRR 301.6203-1, and notices of Deficiency (6212) must be served prior to any collection action.

A-10 cont.

An "assessment" is an administrative determination of tax liability and until the assessment has been made the tax has not been found to be owing. *In re We5tern Trading Co., D.C. Nev. 1972, 340 F.Supp. 1130.*

Response to Petitioners Paragraph 13.

13. The Petitioner, Francesca Aguilera, failed to establish any authority or jurisdiction over Respondent, and the Petitioner's Summons was not issued under Statutory requirements; the Respondent was not required to respond, for reasons stated in Paragraph 6.

Plaintiff incorporates herein by reference, paragraphs 1-13 above as if stated in full.

Wherefore, having stated in full its opposition to Petition to Enforce Internal Revenue Summons, Respondent prays for denial of said Petition and moves to dismiss this action with prejudice: A. Requests the Court to Order the removal of all liens and levies ab initio relating to these tax years 1989, 1990, and 1991.

B. The expungement of all lien and levy records ab initio relating to these tax years 1989, 1990 and 1991.

C. The return of all monies collected in this illegal action.

D. A sanction of $1,000.00 against Francesca Aguilera for this frivolous and meritless action that is procedurally insupportable. E. A sanction of $1,000.00 against Francesca Aguilera for each and every illegal lien and levy placed on Respondent's Wages, earnings and

accounts, including the Wage levy on Respondent's Wife's Wage at Montgomery Ward.

F. A sanction of $1,000.00 against David L. Denier for this frivolous and meritless action that is procedurally flawed.

G. Granting Respondent such other and further relief as the Court may deem just and proper.

JUDICIAL NOTICE

I respectfully request that the court take judicial notice of all cites and facts presented herein pursuant to:

Evidence Code 5451. Matters which must be judicially noticed

Judicial notice shall be taken of the following: (a) The decisional, constitutional, and public statutory law of this state and of the United States and the provisions of any charter described in Section 3, 4, or 5 of Article XI of the California Constitution, and the abuse of process of the Federal Rules of Civil Procedure. Dated: 1 July 1996

signed Raymond B. Sherwood

EXHIBIT 1

PREFACE-1994 EDITION

This twelfth edition of the United States Code, prepared and published pursuant to section 285b of Title 2 of the Code, is a consolidation and codification of all the general and permanent laws of the United States in force on January 4, 1995. By statutory authority, this edition may be cited "U.S.C. 1994 ed." Previous editions were published in 1926. 1934, 1940, 1946, 1952, 1958, 1964, 1970, 1976, 1982, and 1988.

Because many of the general and permanent laws that are required to be incorporated in the Code are inconsistent, redundant, and obsolete, the Office of the Law Revision Counsel of the House of Representatives has been engaged in a continuing, comprehensive project authorized by law to revise and codify, for enactment into positive law, each title of the Code. When this project is completed, all the titles of the Code will be legal evidence of the general and permanent laws and recourse to the numerous volumes of the United States Statutes at Large for this purpose will no longer be necessary. Titles 1, 3, 4, 5, 9, 10, 11. 13. 14, 17, I8, 23, 28, 31, 32, 35, 37, 38, 39, 44, 46, and 49 have been revised, codified, and enacted into positive law and the text thereof is legal evidence of the laws therein contained.

The matter contained in the other titles of the Code is prima facie evidence of the laws.

EXHIBIT 1 cont.

The title and chapter structure of the 1988 edition, together with Supplement V thereto, has been substantially preserved, the only changes made having been necessitated by the enactment of legislation since 1988.

This edition was prepared and published under the supervision of Edward F. Willett, Jr., Law Revision Counsel of the House of Representatives, with the assistance of the West Publishing Company of St. Paul, Minnesota, which assisted in preparing all prior editions and supplements of the Code. Grateful acknowledgment is made to the staffs of the Office of the Law Revision Counsel, the West Publishing Company. and the Government Printing Office for their untiring efforts and cooperation.

signed Newt Gingrich,

Speaker of the House of Representatives;

Washington, D.C., January 4, 1995.

EXHIBIT 1 cont.

TITLES OF UNITED STATES CODE

*1. General Provisions.

2. The Congress

*3. The President.

*4. Flag and Seal, Seat of Government and the States.

*5. Government Organization and Employees; and Appendix.

+6. (Surety Bonds).

7. Agriculture.

8. Aliens and Nationality.

*9. Arbitration.

*10. Armed Forces; and Appendix.

*11. Bankruptcy; and Appendix.

12. Banks and Banking.

*13. Census.

*14. Coast Guard.

15. Commerce and Trade.

16. Conservation.

*17. Copyrights.

*18. Crimes and Criminal Procedure; and Appendix.

19. Customs Duties.

20.Education.

21. Food and Drugs.

22. Foreign Relations and Intercourse.

EXHIBIT 1 cont.

*23. Highways.

24. Hospitals and Asylums.

25. Indians.

26. Internal Revenue Code; and Appendix.

27. Intoxicating Liquors.

*28. Judiciary and Judicial Procedure; and Appendix.

29. Labor.

30. Mineral Lands and Mining.

*31. Money and Finance.

*32. National Guard.

33. Navigation and Navigable Waters.

|34. (Navy).

*35. Patents.

36. Patriotic Societies and Observances.

*37. Pay and Allowances of the Uniformed Services.

*38. Veterans' Benefits; and Appendix.

*39. Postal; Service.

40. Public Buildings, Property, and Works; and Appendix.

41. Public Contracts.

42. The Public Health and Welfare.

43. Public Lands.

*44. Public Printing and Documents.

45. Railroads.

EXHIBIT 1 cont.

*46. Shipping: and Appendix.

47. Telegraphs, Telephones, and Radiotelegraphs.

48. Territories and Insular Possessions.

*49. Transportation.

50. War and National Defense; and Appendix.

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*This title has been enacted as law. However, any appendix to this title has not been enacted as law.

+This title was enacted as law and has been repealed by the enactment of Title 31.

|This title has been eliminated by the enactment of Title 10.

Note: The lack of an astrick (*) indicates title 26 has not been enacted into positive law.

(See Page III)

EXHIBIT 2

PARALLEL TABLE OF AUTHORITIES AND RULES

The following table lists rulemaking authority (except 5 U.S.C. 301) for regulations codified in the *Code of federal Regulations.* Also included are statutory citations which are noted as being interpreted or applied by those regulations.

The table is divided into four segments: United States Code citations, United States Statutes at Large citations, public law citations, and Presidential document citations. Within each segment the citations are arranged in numerical order:

For the United States Code, by title and section;

For the United States Statutes at Large, by volume and page number.

For public laws, by number; and

For Presidential documents (Proclamations, Executive orders, and Reorganization plans) by document number.

Entries in the table are taken directly from the rulemaking authority citation provided by Federal agencies in their regulations. Federal agencies are responsible for keeping these citations current and accurate. Because Federal agencies sometimes present these citations in an inconsistent manner, the table cannot be considered all-inclusive.

The portion of the table listing the United States Code citations is the most comprehensive, as these citations are entered into the table whenever they are given in the authority citations provided by the agencies. United States Statutes at Large and public law citations are carried in the table only when there are no corresponding United States Code citations given.

For a list of current public laws cited as rulemaking authority, see the Parallel Table of Authorities and Rules in the monthly "List of CFR Sections Affected" (LSA).

This table is revised as of January 1, 1995. Additions and removals to the table resulting from regulations published in the *Federal Register* since January 1, 1995, are found in the current month's edition of the LSA.

Authorities

26 U.S.C. (1986 I.R.C.) Continued	CFR
6001	26 Parts 1, 31, 55, 156 27 Parts 19, 53, 194, 250, 296
6011 – 6012	26 Part 1

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6011.....26 Parts 31, 40, 55, 156, 301
.... 27 Parts 25, 53, 194

6015.....26 Part 1

6020 .....27 Parts 53, 70

6021.....27 Parts 53, 70

6031.....26 Part 1

6033.....26 Part 301

6036.....26 Part 301

6038 – 6038B.....26 Part 1

6038A.....26 Part 1

6039A.....26 Part 7

6041.....26 Part 1

6043.....26 Part 1

6045.....26 Parts 1, 5f

6047.....26 Part 35

6048.....26 Part 404

6049.....26 Part 1

6050D.....26 Parts 1, 602

6050H – 6050I-1.....26 Part 1

6050K – 6050L.....26 Part 1

6050M.....26 Parts 1, 301

6050P.....26 Part 1

6051 ....26 Part 31

6053.....26 Part 31

EXHIBIT 2 cont.

6056.....27 Part 22

6059.....26 Part 301

6060.....26 Part 1

6061.....26 Part 156
27 Parts 22, 25, 53, 194, 270, 285, 290

6064.....27 Part 70

6065.....26 Part 1
27 Parts 18, 20, 22, 24, 25,
194, 197, 252, 270, 285,290

6071..... 26 Parts 1, 31, 40, 55, 154, 156
..... 27 Parts 53, 194

6081.....27 Part 53

6090.....26 Part 43

6091.....26 Parts 1, 40, 44, 46, 55, 156,
... 27 Parts 24, 25, 53, 194, 197,

6101 – 6104.....27 Part 53

6101.....26 Part 40

6102.....27 Part 70

6103 – 6104..... 26 Part 301

6103.....20 Parts 401, 422
42 Parts 401

6109.....26 Parts 35a, 40, 150
27 Parts 19, 22, 24, 53, 194, 197, 270, 285

6111 –6112.....26 Part 301

6151.....27 Parts 22, 25, 53, 194, 270, 290

6154.....26 Part 1

6155.....27 Parts 53, 70

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6157..... 26 Part 31

6158.....26 Part 301

6159.....27 Part 70

6161.....26 Part 158.
.27 Part 53

6201.....27 Part 70

6203 – 6204.....27 Part 70

6205.....26 Part 31

6223..... .....26 Part 301

6227.....26 Part 301

6230 – 6231..... ... 26 Parts 1, 301

6232.....26 Parts 41, 150

6233.....26 Part 301

6241.....26 Part 301

6245.....26 Part 301

6301 – 6303.....27 Part 53

6301-6302.....27 Part 24

6301 – 6302.....27 Parts 24.
25, 250, 270, 275.

6301.....27 Part 70

6302..... ....26 Parts 1, 31, 40,
27 Parts 19, 251, 285
31 Parts 203, 214

6303.....27 Part 70

6311.....27 Parts 19, 24, 25, 53, 70, 194, 270

EXHIBIT 2 cont.

6313 - 6314.....27 Part 70

6313.....27 Parts 25, 270, 275, 295.

6314.....27 Part 194

6321..... .27 Part 70

6323.....26 Part 1
27 Part 70

6324A – 6324B..... .26 Part 301

6325.....26 Part 401
.....27 Part 70

6326.....26 Part 301
27 Part 70

6331 – 6343.....27 Part 70

6334..... 26 Part 404

6364.....26 Part 31

6401.....27 Part 70

6402.....27 Parts 25, 53, 194, 197, 270, 285, 290.

6404..... ...26 Part 301
27 Parts 53, 70, 270, 275, 285, 290

6407.....27 Part 70

6416.....27 Parts 53, 70.

6423.....27 Parts 70, 270

6426.....26 Part 154

6501.....27 Part 70

6503.....27 Part 70

6511.....27 Parts 70, 194, 197

EXHIBIT 2 cont.

6513 – 6514.....27 Part 70

6532.....27 Part 70

6601 – 6602.....27 Part 70

6601.....27 Parts170, 194, 296

6611.....27 Part 70

6621 – 6622..... 27 Parts 70, 170, 206, 24, 25, 197, 270, 285

6689.....26 Part 301

6701.....27 Part 70

6721.....26 Part 35a

6723.....27 Part 70

6801.....27 Part 70

6804.....27 Part 250

6806.....27 Parts 19, 22, 25, 270, 285, 290

6851.....26 Part 1

6862 – 6863.....27 Part 70

6867.....26 Parts 1, 301

6901.....27 Part 70

7011.....27 Parts 19, 22, 24, 25, 70, 194, 270, 285, 290

7025.....27 Part 197

7101 - 7102.....27 Part 250

7101..... 26 Part 403
27 Parts 72, 275

7102.....27 Parts 70, 250

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7121 - 7122.....27 Part 70

7207.....27 Part 70

7209.....27 Part 70

7212.....27 Parts 170, 270, 275, 285, 290, 295, 296

7213..... 27 Part 197

7214.....27 Part 70

7216.....26 Parts 1, 301

7302.....27 Parts 24, 252

7304.....27 Part 70

7322 – 7327.....26 Part 403

7322 – 7326.....27 Part 72

7325.....27 Parts 270, 285

7326.....27 Part 72

7327.....27 Part 72

7342.....27 Parts 24, 25, 170. 270, 275, 285, 290, 295, 296

7401.....27 Part 70

7403.....27 Part 70

7406.....27 Part 70

7423 – 7426.....27 Part 70

7429 – 7430.....27 Part 70

7432.....27 Part 70

7502 – 7503.....27 Parts 24, 70, 270

7505 – 7506.....27 Part 70

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7510.....27 Part 19

7513.....27 Part 70

7519.....26 Part 1

7520.....26 Parts 1, 20, 25, 301

7601 – 7606..... ...27 Part 70

7602.....27 Parts 170, 296

7606.....27 Parts 24, 25, 170, 270, 285, 290, 285, 296

7608.....27 Parts 70, 170, 296

7610.....27 Part 70

7622 – 7623.....27 Part 70

7624.....26 Part 301

7651 et seq.....40 Part 76

7651 – 7652.....27 Part 250

7652.....27 Part 275

7653.....27 Part 70

7654.....26 Part 1

7701.....26 Parts 1, 31, 301

....7804.....26 Part 1

7805.....20 Part 615
26 Parts 1, 3

Exhibit 10

PETITION TO QUASH

This is a petition to quash the illegal summons, Form 6637 and 6638's that is dated the 7th day of February 1996.

The reasons to quash this alleged summons are:

1. There is no basis for jurisdiction as the summons fails to provide a signature of a duly elected or appointed judge or seal of clerk of a 9th District Court to comply with appropriate process to compel any production of records pursuant to IRC 7402(b).

a. The court holds that: If the Secretary or his delegate wishes to enforce the summons, he must proceed under 5 7402(b), which grants the District Courts of the United States jurisdiction "by appropriate process to compel such attendance, testimony, or production of books, papers, or other data. Reisman v. Caplin, 375 US 440, 445, 446, 84 S.Ct. 508, 11 L.Ed.2d 459 (1964).

b. The court also holds that: An application for an ex parte order directing respondent to obey an internal revenue service summons with respect to income tax records is treated as a complaint and under Rule 8 it is necessary for the complaint to contain a short and plain statement of the claim showing that the pleader is entitled to relief. Matter of Carroll, D.C.N.Y. 1957, 246 F.2d 762, certiorari denied 78 S.Ct. 85, 355-U.S. 857, 2 L.Ed.2d 64.

EXHIBIT 10 cont.

2. In the matter of Beverly J. Sherwood and Raymond B. Sherwood there has been NO audit, hearing, assessment, deficiency, or judicial action in any administrative court or civil court to allow jurisdiction for any matter relating to this fraudulent summons notice!

3. There is no liability at law or in equity, nor is there any official documented liability for any income tax, which may be relevant or material to this inquiry pursuant to IRC 7602(a), (1).

4. The unspecified demand for records in general is a general search prohibited by the Fourth Amendment requirement of "particularly describing" the place and things to be searched.

5. Summons is a fraudulent document that is unsupported by facts shown on the system of records known as Individual Master File (IMF); Data Services — Treasury/ IRS 24.030; and therefore is unsupported by probable cause based on oath or affirmation for a cause of action in due process of law.

6. There was no service of process or Proof of service in compliance with Rule 4 of the Federal Rules of Civil Procedure. Practice Commentaries state that if the defendant has never been served, not only will the default be vacated; the action will be dismissed as well.

7. The summons is flawed by the failure to provide the correct time from service to appearance pursuant to IRC 5 7609. No notice was given

EXHIBIT 10 cont.

to the person identified in the matter of the summons pursuant to IRC 57609(a)(2) and 26 CFR 301.7609-3(a) Notified person.

The Ninth Circuit in Worrel v. B.F. Goodrich Co., 845 F.2d 840 (1988) held that as long as the acknowledgement is duly returned, the date of its signing by the defendant starts the running of the answering time as supplied by Rule 12(a). Therefore;

8. The summons is flawed by the failure to allow the correct time for petition to quash, which prejudices Petitioners, by allowing a mere 13 day period in violation of the procedures of IRC Sec. 7609(a) requiring a notice be given within 3 days of the date of "service" to any person identified in the summons, but no later than the 23rd day fixed for examination,

9. Summons violates the provisions of IRC 57609(d), (1) in that: No examination of any records under a summons may be made before the close of the 23rd day after the day notice of the summons is provided pursuant to IRC 7609(a)(2), as noted above.

10. The lack of evidence or identity by the Internal Revenue Service of the court of jurisdiction pursuant to IRC _ 7402, 7609(h), 7602 denies the identity of a court to which a petition to quash may be sent by the notified person or any person identified in the records contained in the summons, to comply with 26 CFR 301.7609-3(b)(2)(i) and IRC 7609(b)(2). "It is a universal rule that a party who invokes the jurisdiction of the federal court

EXHIBIT 10 cont.

must allege all facts necessary to give the court jurisdiction of the subject matter." Stewart v. U.S., C.A.7th, 199 F.2d 517, 520 (Major, C.J).

11. Since there is no court of jurisdiction this original is sent only to Mrs. F. Aguilera at 185 Lennon Lane, Ste 200, Walnut Creek, CA 94598.

12. Most importantly! There is no *LEGISLATIVE* JURISDICTION for Title 26 USC Internal Revenue Code as legal evidence of law, because Title 26 USC has never been enacted into positive law as confirmed in Title 1 USC 9204(a) et sea.

Inclusion of statute in United States Code.

The United States Code is only a prima facie statement of the statute law, and statutes collected in it do not change their meaning nor acquire any new force by their inclusion and if construction is necessary, recourse must be had to the original statutes themselves. Murrel v. W. U. Tel. Co., C.C.A. Fla. 1947, 160 F.2d 787.

Based upon the above information we pray that this summons be quashed to prevent an unauthorized invasion of our personal records, papers and effects thus violating our constitutional rights and privileges under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

EXHIBIT 10 CONT.

VERIFICATION

I, Raymond B. Sherwood, declare as follows: That I am the subject of the above-entitled action; I have prepared and read the foregoing PETITION TO QUASH and know the contents thereof; that the same is true of my knowledge, except as to the matters which are therein stated on my information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 13th day of February 1996 at Pleasant Hill, California.

signed

_____

Raymond B. Sherwood

1612 Merian Dr.

Pleasant Hill, CA 94523

Enclosed is a true copy of my notarized signature.

Certified Mail No. Z 419 881 722

EXHIBIT 11

RAYMOND B. SHERWOOD

1612 MERIAN DR.

PLEASANT HILL, CALIF 94523

(510) 827-2604

Mr. Neal O. Abreu, Assistant District Director

Internal Revenue Service

4771 Watt Ave. Suite 474

Sacramento, Calif. 95813-2900

Dear Mr. Abreu:

I have received your letter dated March 7, 1996, and please be aware I do not plan to attend your proposed appointment because you and/or other Internal Revenue Officers have failed to reply to my other inquires regarding some of my questions.

In regard to your letter mentioned above, are you suggesting that YOU or the Internal Revenue Service has some authority over me?

If the answer to this question is yes, will you kindly inform me just what this authority is and how it related to me?

In regard to your letter mentioned above, would you please be so kind as to inform me just what is your jurisdiction over me?

I have spent considerable time in researching the Internal Revenue Code and I can not find answers to those questions.

EXHIBIT 11 cont.

I have found that Title 26 of the Code has never been enacted into positive law and as such is only prima facie evidence.

I also would appreciate knowing the Delegated Authority of one named Dorothy May to serve your administrative summons.

Which is further flawed by:

1. The failure to allow the correct time for petition to quash, which prejudices Beverly J. Sherwood and Raymond B. Sherwood, the subjects to this action, by allowing a mere 14 day period in violation of the procedures od IRC Sec. 7609(a) requiring a notice be given within 3 days of the date of "service" to any person identified in the summons, but no later than the 23rd day filed for examination.
2. The summons violates the provisions of IRC Sec 7609(d), (1) in that: No examination of any records under a summons may be made before the close of the 23rd day after the day notice of the summons is provided pursuant to IRC Sec. 7609(a)(2).
3. The lack of evidence or identity of a court of jurisdiction by the Internal Revenue Service pursuant to IRC Sec. 7402, 7609(h), 7602 denies the identity of a court to which a petition to quash may be sent by the notified person or any person identified in the records contained in the summons, to comply with 26 CFR 301.7609-3(b), (2), (I), and IRC Sec. 7609(b), (2), even if Title 26 had been enacted into Positive law.

EXHIBIT 11 cont.

4. There is no basis for jurisdiction as the summons fails to provide a signature of a duly elected or appointed judge or seal of clerk of a 9th District Court of the United States to comply with appropriate process to compel production of records pursuant to IRC 7402(b).

The court holds that: If the Secretary or his delegate wishes to enforce the summons, he must proceed under Sec. 7402(b), which grants the District Courts of the United States jurisdiction "by appropriate process" to compel such attendance, testimony, or production of books, papers, or other data." Reisman v. Caplin, 375 440, 445, 84 S. Ct. 508, 11 L. Ed. 2nd 459 (1964).

The court also holds that: An application for an ex parte order directing respondent to obey an Internal Revenue Service Summons with respect to income tax records is treated as a complaint to contain a short and plain statement of the claim showing that the pleader is entitled to relief. Matter of Carrol, D.C. N.Y 1957, 246 F. 2d 762, cert. Denied 78 S. Ct. 85, 355 U.S. 857, 2 L.Ed. 2d 64.

Please respond within 20 days.

Sincerely

signed Rraymond B. Sherwood Dated March 10, 1996

Cert. # Z 005 648 845

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA and FRANCESCA AGUILERA, Revenue Officer, Internal Revenue Service, Petitioners,	NO. C-96-1828-MEP
v.	ORDER ENFORCING SUMONSES
RAYMOND B. SHERWOOD, Respondent.	

This case having come on for hearing on July 26, 1996, at 10:30 a.m., upon the return of an Order to Show Cause heretofore issued by this Court, and the Court having considered the record herein, including the Verified Petition To Enforce Internal Revenue Summonses, it is hereby

ORDERED that respondent **RAYMOND B. SHERWOOD** appear before petitioner **FRANCESCA AGUILERA** or any other designated agent, on or before September 9, 1996, at a time, place or places to be designated by said petitioner to said respondent, and then and there give such testimony and produce such items described in the subject internal

revenue summonses, true copies of which are attached hereto as Exhibit A and B it is further

ORDERED, pending compliance with the subject internal revenue summonses, that respondent Raymond B. Sherwood maintain and preserve all documents and records described in the subject internal revenue summonses which are in his possession or control and that respondent Raymond B. Sherwood refrain from destroying said documents and records, and from taking any other action which would remove said documents from his possession or control, or would in any other way prevent production of said documents and records pursuant to the summonses.

ORDERED that the Case Management/Status Conference set for August 16, 1996, at 9:30 a.m. be vacated to be reset, if necessary, at a later date.

ORDERED this *29th* day of *July*, 1996, at San Francisco, California.

signed Marilyn Hall Patel

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA and FRANCESCA AGUILERA, Revenue Officer, Internal Revenue Service,

Petitioners,

v.

RAYMOND B. SHERWOOD,

_____/

Respondent.

No. C-96-1828 MHP

SUPPLEMENTAL ORDER

Respondent Raymond Sherwood has been the subject of investigation by the Internal Revenue Service ("IRS") for potential tax liabilities for the years 1989-1991 and 1994. In connection with that investigation, Revenue Officer Francesca Aguilera issued a summons to Sherwood directing him to appear and produce documents and records relating to his assets and liabilities for those years. After Sherwood failed to appear, the United States and Aguilera petitioned this court to enforce the summons under 26 U.S.C. §§ 7402(b) & 7604(a). The court issued an order to show cause why respondent should not be compelled to appear and produce documents on May 23, 1996. The May 16 order allowed for the respondent to file a written response to the petition and for the government to reply. Sherwood

moved to dismiss the order to show cause and the United States opposed the motion. The court now considers those submissions.

Sherwood argues that the order to show cause was not authorized by the Federal Rules of Civil Procedure and that the court is without subject matter jurisdiction, personal jurisdiction, legislative jurisdiction, and Constitutional jurisdiction. Sherwood also responds to the petition on which the order to show cause was based.

Sherwood's arguments are patently absurd. For as long as citizens have been advancing inventive arguments for why the federal tax laws were never properly enacted or are not applicable to them, the federal courts have been defeating those claims. "For over 75 years, the Supreme Court and the lower federal courts have both implicitly and explicitly recognized the Sixteenth Amendment's authorization of a nonapportioned direct income tax on United States citizens residing in the United States and thus the validity of the federal income tax laws as applied to such citizens.,, In re Becraft, 885 F.2d 547, 548 (9th Cir. 1989) (citations omitted).

Despite respondent's fanciful contentions to the contrary, Title 26 of the United States Code was indeed enacted into law and provides this court with subject matter jurisdiction over enforcement of a summons

under internal revenue laws. 26 U.S.C. §§ 7402(b) &: 7604(a). Moreover/ this court has personal jurisdiction over respondent by virtue of his residence in this district. Fed. R. Civ. P. 4(k)(1)(A); Omni Capital Int'l, Ltd. v. Rudolph Wolff & Co., Ltd., 484 U.S. 97 (1987).- Accordingly, all of respondent's jurisdictional arguments fail.

Finally, Sherwood argues that the court's order to show cause was not authorized by the Federal Rules of Civil Procedure. The order was authorized by Title 26 which gives a district court power to enforce a summons issued by the IRS upon a proper showing. The showing the government must make is slight. United States v. Powell, 379 U.S. 48, 58 (1994); United States v. Abrahams, 905 F.2d 1276, 1280 (9th Cir. 1990). Respondent then has a burden to show that the government is acting in bad faith or that enforcement would be improper. United States v. Dynavac, Inc., 6 F.3d **1407t** 1414 (9th Cir. 1993). While the government met its burden, Sherwood cannot meet his. His responses to the petition are almost entirely premised on the lack of jurisdiction reject above. To the extent that they merely protest the procedural propriety of the investigation and the summons, they are equally unpersuasive.

Accordingly, Sherwood.is HEREBY ORDERED to comply with the order to enforce summons filed by this court on July 30, 1996.

IT IS SO ORDERED.

Dated: July 31, 1996 signed Marilyn Hall Patel

United States District Judge

MICHAEL J. YAMAGUCHI (California State Bar No. 84984)

United States Attorney

JAY R. WEILL (California State Bar No. 75434)

Assistant United States Attorney, Chief, Tax Division

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Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA and FRANCESCA AGUILERA, Revenue Officer, Internal Revenue Service, Petitioners,	No. C-96-1828 MHP
RAYMOND B. SHERWOOD, Respondent.	APPLICATION AND ORDER OF DISMISSAL

Petitioners United States of America and Francesca Aguilera hereby advise the Court that respondent Raymond B. Sherwood appeared before petitioner Aguilera pursuant to the Court's Order Enforcing

Summonses and request that this action be dismissed pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

MICHAEL J. YAMAGUCHI
United States Attorney

signed David L. Denier
DAVID L. DENIER

Assistant United States Attorney
Tax Division

ORDER

Upon the request of the petitioners and pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, this action is hereby dismissed.

ORDERED this _____day of SEP 20 1996, at San Francisco, California.

signed MARILYN HALL PATEL

UNITED STATES DISTRICT JUDGE

A-13 cont.